STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ADRIAN PIETER MAASKANT, Charging Party, v. KERN HIGH SCHOOL DISTRICT, Respondent.	)	Case No. LA-CE-3911 PERB Decision No. 1319 March 19, 1999

Appearances: Adrian Pieter Maaskant, on his own behalf; Carl B. A. Lange III, Director of Labor Relations, Schools Legal Service, for Kern High School District.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on Adrian Pieter Maaskant's (Maaskant) appeal from a Board administrative law judge's (ALJ) order granting the Kern High School District's (District) motion to dismiss Maaskant's unfair practice charge and complaint.

Maaskant filed the underlying unfair practice charge on March 11, 1998 and amended that charge on April 22, 1998. On July 22, 1998, the Board's Office of General Counsel issued a complaint based on Maaskant's charge. The complaint alleged that the District violated section 3543.5(a) of the Educational Employment Relations Act (EERA)[1] when it refused to discontinue

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 provides, in relevant part:

> It shall be unlawful for a public school

the payroll deduction that Maaskant had established to pay his membership dues to the Kern High School Faculty Association (Association). On August 13, 1998, the District filed an answer denying the relevant allegations and asserting several affirmative defenses. The District's answer also contained a motion to dismiss. On August 17, 1998, Maaskant filed an opposition to the District's motion to dismiss. On November 19, 1998, the ALJ issued an order granting the District's motion to dismiss on the ground that the complaint failed to state a prima facie case for violation of the EERA.

For the reasons that follow, we reverse the order granting the motion to dismiss and remand the matter to the ALJ for further proceedings consistent with this decision.

FACTUAL FINDINGS

When considering a motion to dismiss, the Board construes all facts in the manner most favorable to the non-moving party. (See California State Employees Association (Parisi) (1989) PERB Decision No. 733-S [treating motion to dismiss as motion for summary judgment]; Los Angeles Community College District (1983) PERB Decision No. 331 [treating motion to dismiss as motion for

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employer to do any of the following:

> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

judgment on the pleadings].) Therefore, we assume the truth of the following allegations.

The District is a public school employer within the meaning of the EERA. Maaskant is a public school employee within the meaning of the EERA. The District and the Association were parties to a collective bargaining agreement (CBA) that had a negotiated term of mid-1995 through mid-1998. The 1995-98 CBA contained a maintenance of membership provision which permitted Association members to resign their membership only during the thirty-day period immediately preceding the expiration of the CBA.[2] Maaskant became a member of the Association some time prior to June 4, 1997, and established a payroll deduction to pay his Association membership dues.

On June 4, 1997, Maaskant requested that the District terminate the payroll deduction that he had established to pay his Association membership dues. Despite Maaskant's request, the District continued to deduct Association dues from Maaskant's paycheck until May of 1998.

. In mid-September, 1997, the parties completed negotiations over a successor CBA. Although the negotiated term of the

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[2]Article V, Section D of the CBA provides:

> Commencing upon ratification of this Agreement and terminating 30 days prior to the expiration of this Agreement, any employee who is a member or who becomes a member of the Association shall be required to maintain membership in the Association for the term of this Agreement.

existing CBA ran until mid-1998, the term of the successor CBA ran from Fall 1997 through mid-2000. The provisions of the 1997-2000 CBA superseded the provisions of the 1995-98 CBA.

On September 29, 1997, Maaskant again requested that the District halt his dues deduction. The District again refused to do so.

ORDER GRANTING MOTION TO DISMISS

EERA permits a public school employer and an employee organization to agree, in writing, that members of the employee organization must, as a condition of employment, maintain their membership in the employee organization during the term of the written agreement. (EERA sec. 3540.1(i) (I).)[3] Such an arrangement is commonly referred to as a maintenance of membership provision. A maintenance of membership provision may not deprive employees of their right to terminate their membership during the 30-day period following the expiration of

[3]EERA section 3540.1 provides, in relevant part:

> (i) "Organizational security" means either of the following:
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> (1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

the agreement containing the maintenance of membership provision. (Id.) Based on the foregoing, the ALJ concluded that there was no question that Maaskant was entitled to terminate his membership in the Association. The only question was when Maaskant could terminate his membership.

Although this case presents a novel question, the Board has addressed a similar issue in the decertification context. Pursuant to EERA section 3544.7,[4] the Board will dismiss any representation petition filed during the term of a lawful CBA unless that petition is filed less than 120 days, but more than 90 days, prior to the expiration of the CBA. An unusual situation arises where the employer and the exclusive representative negotiate a successor CBA that becomes effective more than 120 days prior to the expiration of the initial CBA, potentially foreclosing the window period for the filing of a decertification petition. (See Butte County Superintendent of Schools (1983) PERB Decision No. 338 (Butte); Hayward Unified

[4]Section 3544.7 provides, in relevant part:

> (b) No election shall be held and the petition shall be dismissed whenever either of the following exist:
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> (1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

School District (1980.) PERB Order No. Ad-96 (Hayward) .)

In order to prevent an employer and an employee organization from colluding to prevent employees from petitioning for a change in representation, the Board adopted the "premature extension" doctrine. (Butte, regional dir. dec. at p. 3; Hayward, regional dir. dec. at p. 4.) The premature extension doctrine provides that an early CBA extension does not alter the window period for filing a decertification petition under EERA section 3544.7(b)(1). (Butte, regional dir. dec. at p. 3.) Accordingly, the Board will not dismiss a representation petition that is filed more than 90 days but less than 120 days prior to the date that the initial CBA would have expired absent any action by the parties. (Id.)

In ruling on the motion to dismiss, the ALJ concluded that the Board's decision in Butte controlled the result in this case. Accordingly, the ALJ held that Maaskant could not resign his Association membership or curtail his dues deduction until the negotiated term of the 1995-98 CBA ended in mid-1998. Since the charge and complaint allege that the District violated the EERA by continuing to withhold Maaskant's dues until May of 1998, the ALJ held that the complaint did not state a prima facie case for violation of the EERA and granted the District's motion to dismiss.

MAASKANT'S APPEAL

Maaskant's appeal essentially challenges the ALJ's application of the doctrine of premature extension. Maaskant

contends that the Association and the District effectively terminated the 1995-98 CBA when they ratified the 1997-2000 CBA. Accordingly, Maaskant argues that EERA section 3540.1(i)(1) entitled him to rescind his Association membership within 30 days after the 1997-2000 CBA became effective.

DISTRICT'S RESPONSE

The District responds that Maaskant misunderstands the application of the premature extension doctrine. Specifically, the District argues that Maaskant's appeal fails to address the distinction between the expiration and the termination of a CBA. The District posits that, although' the 1997-2000 CBA resulted in the termination of the 1995-98 CBA, it did not alter the expiration date of the 1995-98 CBA. The District concludes that Maaskant did not have the right to terminate the deduction of his dues until June 30, 1998.

DISCUSSION

EERA requires that a maintenance of membership provision be part of a valid written agreement between a public school employer and an employee organization. (EERA sec. 3540.l(i)(1).) When the written agreement containing the maintenance of membership provision ceases to have effect, the maintenance of membership provision no longer binds members of the employee organization. For the reasons that follow, we decline to expand the premature extension doctrine to cover EERA section 3540.l(i) (1). Accordingly, we conclude that the thirty-day period for resigning membership begins to run on the date when

the written agreement containing the maintenance of membership provision ceases to have effect, either through the passage of time or through some affirmative action of the parties.

As the ALJ noted, the Board has held that the premature extension of a CBA does not change the window period for filing a decertification petition. (Butte, regional dir. dec. at p. 3; see EERA sec. 3544.7.) Although this case presents a facially similar situation, the policy concerns that necessitated the adoption of the premature extension doctrine in the decertification context are absent here.

In order to preserve the stability of the relationship between the exclusive representative and the employer, EERA section 3544.7 precisely defines the period during which a rival employee organization may file a petition to decertify the exclusive representative. Subjecting an exclusive representative to the possibility of continual, yet unpredictable, decertification attempts would create instability and diminish the chances of establishing an effective bilateral relationship. The window period is precisely defined to provide advance notice to all parties (the employer, the exclusive representative, any potential rival employee organizations and the employees) of the specific timeframe in which a decertification petition must be submitted.

In Butte, the Board balanced the need for a stable bargaining relationship against bargaining unit employees' right to choose their representative for all purposes relating to

collective bargaining. The Board determined that, when an employer and an exclusive representative enter into a successor CBA during the negotiated term of an existing CBA, the window period in which a decertification petition may be filed does not change. It remains the defined period based on the expiration date of the original CBA. In this way, parties are prevented from agreeing to premature contract extensions in order to eliminate the decertification window period.

Importantly, the window period contained in EERA section 3544.7 does not depend on any specific provision of the parties' CBA. It is defined solely by the negotiated expiration date of that CBA.

Section 3540.1 (i) (1) presents an entirely different situation. Pursuant to section 3540.1 (i) (1), an employer and an exclusive representative may agree, in writing, that individual employees who are members of the union must maintain their membership for as long as the written agreement remains in effect. Absent such an agreement, employees have the right to terminate their union membership at any time at their individual discretion. Since maintenance of membership relies on the effectiveness of a written agreement, and since individual employee action is required to terminate membership, the considerations that led the Board to adopt the premature extension doctrine with regard to the decertification petition window period do not exist here. Instead, EERA section 3540.1(i)(1) requires employees to maintain union membership

during the period in which they are mandated to do so by a specific CBA provision. When that provision ceases to have effect for any reason, employees are free to terminate their membership for a period of at least 30 days. (EERA sec. 3540.1(i)(1).) Thus, when a CBA containing a maintenance of membership provision is superceded by a new agreement, the membership termination window is activated.

We conclude that the premature extension doctrine does not apply to maintenance of membership agreements. Further, we hold that a maintenance of membership provision may not continue to bind members beyond the life of the agreement in which it is contained. Accordingly, a maintenance of membership arrangement expires within the meaning of EERA section 3540.1(i)(1) when the written agreement in which it is contained ceases to have effect, either through the passage of time or through some affirmative action of the parties.

ORDER

The District's motion to dismiss is hereby DENIED and the matter is REMANDED to the ALJ for further proceedings consistent with this Decision.

Chairman Caffrey and Member Amador joined in this Decision.